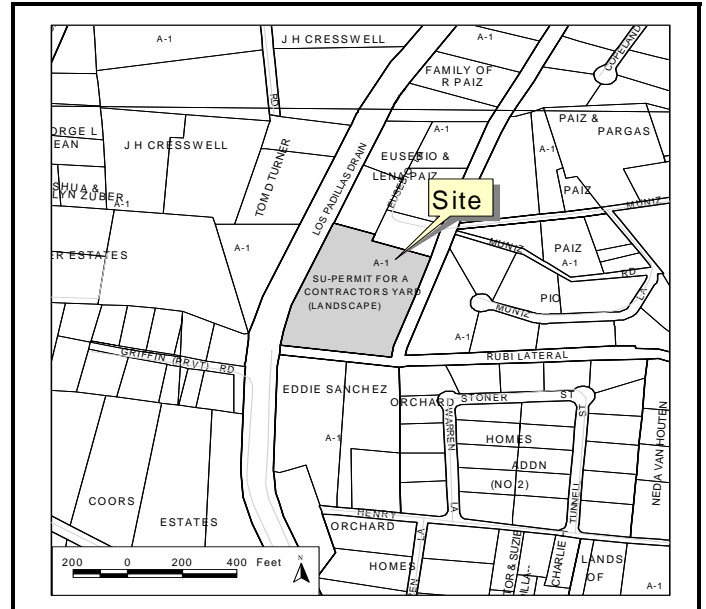


<b>Applicant:</b>	Carlos Paiz, Jr.
<b>Agent:</b>	Allan Paiz
<b>Location:</b>	2276 Muniz Road SW
<b>Property Size:</b>	4.95 acres
<b>Existing Zone:</b>	A-1
<b>Proposed Zoning/SUP:</b>	SUP for a Contractor's Yard (landscape contractor)
<b>Recommendation:</b>	Denial



**Summary:** This is a request for a renewal of a Special Use Permit for a Contractor's Yard. This Special Use Permit was originally approved on January 27, 1992 for five years, in 1998 for another five years and 2003 for an additional two years. The applicant is now requesting an additional renewal to the Special Use Permit. This is a landscape maintenance business located in an A-1 zoned, rural residential neighborhood setting. In 2003, when the Special Use Permit was issued for two years, the applicant acknowledged that the use had outgrown the site and two years were granted in order to allow the applicant to relocate. This case was deferred from the October 5, 2005 public hearing in order to allow the applicant several additional months to relocate the contractors yard to a new location. To date, the applicant has not yet relocated.

**Staff Planner:** Enrico Gradi , Program Planner

**Attachments:**

- 1.Application
2. Land Use and Zoning Maps
3. Notice of Decision letters from 1992, 1998 and 2003
4. Site Plan

Bernalillo County Departments and other interested agencies reviewed this application from 8-23-05 to 9-12-05.

Agency comments are verbatim and were used in preparation of this report, which begins on page 11.

**AGENDA ITEM NO.: 5**  
**County Planning Commission**  
**February 1, 2006**

SU-50023 Charles Paiz, agent for Carlos Paiz, requests approval of a Special Use Permit for a Contractor's Yard on Tract 11, located at 2276 Muniz Road SW, at the end of Muniz Road north of the Rubi Lateral between the Los Padillas Drain and Durand Lateral, zoned A-1, containing approximately 4.95 acres. (R-11)(DEFERRED FROM THE OCTOBER 5, 2005 PUBLIC HEARING).

**AREA CHARACTERISTICS AND ZONING HISTORY**

**Surrounding Zoning & Land Uses**

	<b>Zoning</b>	<b>Land Use</b>
<b>Site</b>	A-1 With a Special Use Permit for a Contractors Yard (CSU-98-06)(CSU-91- 27) (CSU-30007)	Landscape Contractors Yard, Parking and Single family dwellings
<b>North</b>	A-1	Single Family Residential
<b>South</b>	A-1	Agricultural Conservancy right-of-way Rubi Lateral
<b>East</b>	A-1	Durand Lateral
<b>West</b>	A-1	Los Padillas Drain

**BACKGROUND:**  
**The Request**

This is a request for a renewal of a Special Use Permit for a Contractor's Yard. This Special Use Permit was originally approved on January 27, 1992 (CSU 91- 27) for five years, and a renewal was approved in 1998 (CSU 98-06), for another five years and once again in 2003 for two years.. The applicant is currently requesting a renewal to this Special Use Permit for another five years.

The applicant has 18 business trucks, and approximately 25 lawn mowers, in addition to other landscape maintenance materials, such as weed eaters and rakes etc., which are kept on the site. There is a garage and small shed used for storage. The applicant has 20 employees for this business.

There were concerns at the last public hearing in 2003 regarding this site, including issues of traffic generated by this use and the size of this business being too intense and outgrowing the subject site. Also, the location being located in a rural residential setting, with small and narrow winding country roads was discussed. The Zoning Department has noted zoning violations in recent years on this site, including an excessive number of vehicles parked and landscape cuttings on the site, which are not suppose to be stored on the property. The submitted application materials are identical to those submitted for the 2003 request.

### **Surrounding Land use and Zoning**

On April 19, 1983, the Board of County Commissioners authorized the location of a book bindery (CZ-83-9) on Lot 1, LD 70-195, zoned A-1 and located at 2276 Don Felipe Road SW. This site is directly south of the subject site approximately one-half mile.

On September 4, 1973, the Bernalillo County Board of County Commissioners approved a Special Use Permit for a scrap metal business on Tract 43A, MRGCD Map No. 53, zoned A-1, located at 2227 Mayflower Road SW. This site is located approximately one-half mile southeast of the subject site.

### **APPLICABLE PLANS AND POLICIES:**

#### **Albuquerque/Bernalillo County Comprehensive Plan**

The site is located in the Rural Area as delineated in the Albuquerque/Bernalillo Comprehensive Plan. The principal goal for this area is to "maintain the separate identity of rural areas as alternatives to urbanization by guiding development compatible with their open character, natural resources, and traditional settlement patterns."

**Policy a** states that Rural Areas shall generally retain their rural character with development consisting primarily of ranches, farms and single-family homes on large lots; higher density development can occur at appropriate locations with in rural villages or planned communities. Overall densities shall not exceed one dwelling unit per acre.

Higher density development must provide local government with property rights ensuring appropriate overall-area gross density.

Each higher density area is to be controlled by site development plan and is to located well away from other such higher density.

**Policy 3.a.** of the Rural Area Goal states "Development in the Rural Area shall allow higher density development to occur at appropriate locations. Rural Area density patterns shall be more specifically defined through lower rank planning. Each higher density area is to be controlled by site development plan and is to be located well away from other such higher density areas."

**Policy 3.b** states that “Development in Rural Areas shall be compatible with natural resource capacities, including water availability and capacity, community and regional goals and shall include trail corridors where appropriate.”

**Policy 3.c** States that development shall be carefully controlled in flood plains and valley areas where flood danger, high water table, soils and air inversions inhibit extensive urbanization.

**Policy g** states that the following shall guide industrial and commercial development in the rural area:

Small-scale, local industries, which employ few people and may sell products on the same premises, are the most desirable industrial use.

Mineral extraction should be discouraged in highly scenic or prime recreational, agricultural or residential areas.

Neighborhood and/or community-scale rather than regional scale commercial centers are appropriate for rural areas. Strip commercial development should be discouraged and, instead, commercial development should be clustered at major intersections and within designated mountain and valley villages.

### **Southwest Area Plan (SWAP)**

**Policy 12** states...”Heavy industrial traffic shall be limited in village centers and residential areas to enhance residential stability, respect the history and integrity of the area, and promote neighborhood scale (CN zoning) economic development. “

**Policy 25** states...”The County and City shall stabilize residential zoning and land use in the plan area.”

a. Cancel discontinued special use permits, special use permits where conditions of approval are not met, and permits that are in violation of the Zoning Ordinance.

c. Limit the location, duration and type of new uses allowed by special use permits to those meeting all the requirements of the adopted zoning ordinance.

1) Restrict new Special Use Permits for heavy commercial and manufacturing uses in South Valley residential zones to owner-occupied businesses with five or fewer employees on ½ acre or greater.

2) Limit the time period between approval of new Special Use Permits and issuance of a building permit to one year.

**Policy 29** states “Provide Pedestrian connections through mixed use areas and activity centers, and separation between parking and pedestrian circulation for public safety and general welfare of area residents.”

**Policy 30** states, “Standards for outdoor lighting shall be implemented to ensure that their use does not interfere with the night sky environment and unnecessarily adjacent properties.”

Outdoor light poles within residential areas should not exceed sixteen (16) feet in height above existing grade; when mounted on buildings or structures, fixtures should not exceed twelve (12) feet from existing grade.

Encourage landscaped areas within lots to break up large expanses of paved area and enhance pedestrian access.

**Policy 31** states “Promote safe vehicular parking with attention to functional and aesthetic concerns. Oversized parking lots of facilities should be discouraged.”

Parking areas should be designed to minimize local temperature gain and reduce air pollution. Potential methods of accomplishing this include light colored materials on parking lot surfaces and trees or other shading devices to shade the surface area of the lot.

**Policy 40** states ” Encourage the location of newly developing neighborhood scale commercial and office uses to within their village centers.“

### **Bernalillo County Zoning Ordinance**

Resolution 116-86 defines criteria for evaluating a Zone Map changes and Special Use Permit applications.

The following policies for deciding zone map changes and Special Use Permit applications pursuant to the adopted Bernalillo County Zoning Ordinance.

A proposed land use change must be found to be consistent with the health, safety and general welfare of the residents of the County.

The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a land use change.

A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other Master Plans and amendments thereto including privately developed area plans, which have been adopted by the BCC.

Stability of the land use and zoning is desirable; therefore, the applicant must provide a sound justification for land use change. The burden is on the applicant to show why the change should be made.

The applicant must demonstrate that the existing zoning is inappropriate because:

An error in the original zone map, Changed neighborhood conditions, which justifies a change in land use or that a different use category is more advantageous to the community as articulated in the Comprehensive Plan or other land use plans as adopted by the BCC.

A land use change shall not be approved where some of the permissive uses in the land use change would be harmful to adjacent property, the neighborhood or the community.

Location on a collector or major street is not itself sufficient justification of apartment, office, or commercial zoning.

A zone change request which would give a zone different from the surrounding zoning to one small area, especially when only one premises is involved, is generally called a “spot zone.” Such a change of zone may be approved only when:

The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or

The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.

A zone change request, which would give a zone different from the surrounding zoning to a strip of land along a street, is generally called a “strip zoning.” Such a change of zone may be approved only when: The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or

The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones, because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.

Section 18, Special Use Permit Regulations, of the Zoning Ordinance allows a property owner to request, and the BCC to authorize uses in any zone in which they are not otherwise permitted. Contractor's yard, Contractor's equipment storage, and Contractor's plant are one of those categories specifically called out in Section 18 as a Special Use Permit. The Commission, in approving such a request shall adopt additional requirements deemed necessary “...to safeguard the public welfare, safety, and health, morals, convenience, and best interest of the neighborhood, and adjoining property, the neighborhood, and the community.”

Resolution 116-86 states the criteria for evaluating a requested zone change or Special Use Permit. The applicant must demonstrate that the existing zoning is inappropriate because of 1) an error in the original zone map; 2) changed neighborhood conditions which justifies a change in land use; or 3) that a different use category is more advantageous to the community as articulated in a County adopted plan.

#### A-1 Rural Agricultural Zone.

The regulations set forth in this section or set forth in this ordinance, when referred to in this section, are the regulations in the A-1 Rural Agricultural Zone. The purposes of this zone are to preserve the scenic and recreational values in the National Forests and similar adjoining land, to safeguard the future water supply, to provide open and spacious development in areas remote from available public services, and to recognize the desirability of carrying on compatible agricultural operations and spacious home developments in areas near the fringes of urban development. The regulations provide for the protection of these important land uses, and are not intended to unduly restrict or regulate farming, or ranching operations.

Use Regulations. A building or premises shall be used only for the following purposes. All uses customarily incidental to the building or premises shall be maintained on site.

#### Permissive Uses:

Ranch, farm, dairy, and rural residential activities.

Display and sale of agricultural products including poultry or rabbits raised on the premises, and products incidental to the sales activity.

One single-family dwelling or H.U.D. Zone Code II manufactured home per lot of record.

## **ANALYSIS:**

### **Surrounding Land Use**

The subject site is surrounded by irrigation laterals and ditches on three sides, and is a rural setting of single family residential and A-1 agricultural uses. This site is not located in, or adjacent to designated industrial or commercial zoning.

### **Zoning Ordinance**

The Zoning Code defines the purposes of the A-1 zone, “to recognize the desirability of carrying on compatible agricultural operations and spacious home development in areas near the fringes of urban development.”

The use appears to be more intense than what is typically found in the rural residential neighborhood surrounding this site. The size of the operation and the storage of equipment and materials that are found on-site is more typical of that found on an M-1 zoned property.

## **Plans**

### **Albuquerque/Bernalillo County Comprehensive Plan**

The site is located in the Rural Area as designated by the Albuquerque/Bernalillo County Comprehensive Plan. The primary Goal is to maintain the separate identity of rural areas as alternatives to urbanization by guiding development compatible with their open character, natural resources, and traditional settlement patterns. The policy regarding commercial development supports small-scale, local industries that employ few people. It continues to encourage neighborhood and/or community scale businesses to locate in the area.

Rural Area Policy 3.b states “development in Rural Areas shall be compatible with natural resource capacities, including water availability and soil capacity, community and regional goals.” The size of the business, which currently occupies is inconsistent with the surrounding A-1 zoning and rural residential land uses.

Rural area Policy g states that commercial development should be clustered at major intersections and within designated mountain and valley villages. The existing activity appears to be in conflict with this Rural area policy. The roads leading to this subject site are not designed for commercial or industrial type use.

A Contractor’s Yard as an industrial uses by definition and is listed in the M-1 zoning category and conflicts with the predominant zoning surrounding the subject site, which is residential and rural. The surrounding properties are zoned A-1 and are single-family residential dwellings.

### **Southwest Area Plan**

Southwest Area Plan Policy 25 states...“The County and City shall stabilize residential zoning and land use in the plan area. 1) Restrict new special use permits for heavy commercial and manufacturing uses in South Valley residential zones to owner-occupied businesses with five or fewer employees on ½ acre or greater.” The Special Use Permit for a Contractor’s Yard given the surrounding context is inconsistent with this Policy 25.

Policy 40 states ” Encourage the location of newly developing neighborhood scale commercial and office uses to within their village centers.“ The proposed use may have once been considered neighborhood scale in size and character, however, this use has outgrown the site. In addition, this use is not appropriate in a village or commercial center.

### **Agency Comments**

The Zoning Enforcement Manager comments that there are several violations, which exist on the site, and the Zoning Enforcement has began on this site in the form of a 30-day notice to abate violation.

### **Conclusion**

Resolution 116-86 establishes policies regarding zone change and Special Use Permit requests. The Resolution states that the applicant must demonstrate that the existing zoning is inappropriate because of an error in the zone map, changed conditions in the neighborhood or community which justifies a change in land use or that a different use category is more advantageous to the community as articulated in the Comprehensive Plan or other land use plans as adopted by the BCC.

In addition, Resolution 116-86 requires that a land use change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan. The site is located with a portion of the plan area that supports the lowest residential densities. The Comprehensive Plan allows one dwelling unit per acre in the Rural Area of the County and Southwest Area Plan Policy 26 allows an overall gross residential density one dwelling unit per acre when sewer and water are available and one and one quarter acre per dwelling unit if sewer and water are not available.

Further, it appears that the location of the requested use is consistent with the Southwest Area Plan in that Policy 25 calls for the County to stabilize residential zoning and land use in the plan area by restricting new Special Use Permits for heavy commercial uses in South Valley to owner-occupied businesses with five or fewer employees on ½ acre or greater. The subject site is no longer able to appropriately contain the applicants landscape maintenance business.

In 2003, when the Special Use Permit was issued for two additional years, the applicant then acknowledged that the use had outgrown the site and two years were granted in order to allow the applicant to relocate to an appropriate site (Attachment 3, Finding Number 4).

### **ADDITIONAL STAFF COMMENT (FEBRUARY 1, 2006)**

This case was deferred from the October 5, 2005 public hearing in order to allow the applicant several additional months to relocate the contractor’s yard to a new and appropriate location. To date, the applicant has not yet relocated to the new site.

### **RECOMMENDATION:**

Denial of CSU-50023 based on the following Findings.



Enrico Gradi  
Program Planner

**FINDINGS:**

1. The request is for a Special Use Permit for a Contractor's Yard on Tract 11, located at 2276 Muniz Road SW, at the end of Muniz Road north of the Rubi Lateral between the Los Padillas Drain and Durand Lateral, zoned A-1, containing approximately 4.95 acres
2. The subject site is located in the Rural Area as defined by the Comprehensive Plan. All adjacent properties are zoned A-1 with residential uses.
3. On June 24, 2003, the applicant was granted a Special Use Permit for two years and was directed to relocate to a more appropriate site prior to the expiration of the permit.
4. This request is not consistent with Resolution 116-86 in that the applicant has failed to demonstrate that the existing zoning is inappropriate.

## **BERNALILLO COUNTY DEPARTMENT COMMENTS**

### **Environmental Health:**

1. The property is currently permitted for a well [drinking water HSTW-98181] and a wastewater system [HSTL-98197].
2. Sewer is available in the area and a water and sewer availability statement is required. Call 924-3987 for avail. statement. If, COA sewer and/or water is available the septic systems must be abandoned and the property connected at owners expense to COA Utilites.

### **Building Manager:**

No adverse comments

### **Zoning Manager:**

Until all corrections are complied with no other action may occur.

The Planning Commission gave it's final approval which ended in June, 2005. Zoning Enforcement will proceed with a 30 day notice to abate violation, however due to their circumstances, willing to grant additional time to abate the violation within reason.

No other adverse comment from zoning at this time.

### **Public Works:**

#### **DRAN:**

No comment received

#### **DRE:**

No comment received

### **Parks & Recreation:**

No comment

### **Sheriff's:**

No comment received

## **COMMENTS FROM OTHER AGENCIES**

### **MRGCOG:**

No adverse comment

### **AMAFCA:**

No adverse comment

### **City Public Works:**

#### **Transportation Development:**

No adverse comment

Water Resources:

No adverse comment

Transit:

No transit service is currently available in the area.

No objection.

City Environmental Health:

No Comment

New Mexico State Highway and Transportation Department:

No adverse comment

NEIGHBORHOOD ASSOCIATION(S):

South Valley Coalition of Neighborhood Assoc.

South Valley Alliance